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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,083	12/01/2003	Gregory Plos	05725.1300-00	1669

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EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/724,083	<b>Applicant(s)</b> PLOS, GREGORY	
	<b>Examiner</b> Eisa B. Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/1/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-29 are pending in this application.

## **DETAILED ACTION**

### ***Priority***

1 This application claims benefit of 60/439,981 that filed on January 14, 2003 and not December 13, 2002 as recited by applicant in the Declaration that filed on April 27, 2004 (see page 2, in the Oath or Declaration). Accordingly, the data provided by applicant is not consistent with PTO records. Correction is required.

### ***Claim Rejections - 35 USC § 102***

2 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11, 16-18 and 21-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Lagrange et al. (US 6,458,168 B1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

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Lagrange et al. (US' 168) teaches a hair dyeing composition comprising dialdehyde heterocyclic compound of 2,3-thiophene-dicarboxaldehyde (see col. 8, line 10) that reads on the claimed formula (I), in which R is 5-membered monoheterocyclic ring comprising a sulfur atom as claimed in claims 1-7 and a nitrogen compound of monoethanolamine and aqueous ammonia that reads on the claimed formula (II) as claimed in claims 1, 8-11 and 16 (see col. 11, lines 65-66), wherein the aldehyde is presented in the amount of 0.01 to 10% and 0.05 to 5% which within the claimed ranges as claimed in claims 17-18 (see col. 11, lines 20-21) and wherein the dyeing composition has a pH in the range of 5 to 10 which within the claimed range as claimed in claims 21 and 22 (see col. 11, line 62). Lagrange et al. (US' 168) also teaches a process for dyeing hair and a multi-compartment device as claimed in claims 23-29 (see col. 12, lines 44-67). Lagrange et al. (US' 168) teaches all the limitations of the instant claims. Hence, Javet et al. anticipates the claims.

3        Claims 1-15, 17-21 and 23-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Javet et al. (US 6,740,128 B2).

Javet et al. (US' 128) teaches a hair dyeing composition comprising dialdehyde heterocyclic compound of 2,5-thiophene-dicarboxaldehyde (see col. 5, line 27) that reads on the claimed formula (I), in which R is 5-membered monoheterocyclic ring comprising a sulfur atom as claimed in claims 1-7 and a nitrogen compound of monoethanolamine that reads on the claimed formula (II) as claimed in claims 1 and 8-11 (see col. 5, line 33), wherein the nitrogen compound is 1,4-diaminobenzene (para-phenylenediamine) as claimed in claims 12-15 (see col. 5, line 35), wherein the amounts of carbonyl compounds and amines individually in the ranges of 0.01 to 10% which within the claimed ranges as claimed in claims 17-20 (see col. 6, lines 14-17)

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and wherein the dyeing composition has a pH in the range of 6 to 11 which within the claimed range as claimed in claim 21 (see col. 6, line 61). Javet et al. (US' 128) also teaches a process for dyeing hair and a multi-compartment device as claimed in claims 23-29 (see col. 7, lines 12-19 and col. 18, claim 11). Javet et al. (US' 128) teaches all the limitations of the instant claims. Hence, Javet et al. anticipates the claims.

***Claim Rejections - 35 USC § 103***

4        The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Javet et al. (US 6,740,128 B2).

The disclosure of Javet et al. (US' 128 B2) as described above, does not teach the claimed range of the pH of the composition.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition with the claimed pH range because the reference teaches a dyeing composition having a pH in the range of 6 to 11 (see col. 6, line 61) which is overlapped with the claimed range, and, thus, a person of the ordinary skill in art would expect such a composition to have similar properties to those claimed, absent unexpected results.

5        Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Javet et al. (US 6,740,128 B2) in view of Junino et al. (US 4,797,129).

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The disclosure of Javet et al. (US' 128 B2) as described above, does not teach aqueous ammonia as a nitrogen compound of the claimed formula (II).

However, Javet et al. (US, 128) suggests the use of alkalizing agents such as ammonium hydroxide for adjusting the pH of the composition (see col. 7, lines 4-7).

Junino et al. (US' 129) in analogous art of hair dyeing formulation, teaches a composition comprising alkalizing agents such as aqueous ammonia and or ammonium carbonate for adjusting the pH of the dyeing composition (see col. 6, lines 1-5).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Javet et al. (US' 128) by substituting the ammonium carbonate with the aqueous ammonia as taught by Junino et al. (US' 129) to make such a composition. Such a modification would be obvious because Junino et al. (US' 129) clearly teaches the equivalence between aqueous ammonia and ammonium carbonate as the alkalizing or basifying agents use to adjust the pH of the dyeing compositions, and, thus, a person of the ordinary skill in the art would be motivated to substitute the ammonium carbonate in the composition of Javet et al. with the aqueous ammonia as taught by Junino et al. in order to adjust the pH of the dyeing composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

### ***Conclusion***

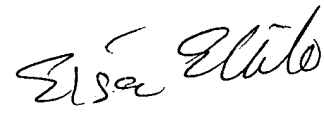
6 The remaining references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (US 6,451,067 B1).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

October 15, 2005